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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91161533
Party	Defendant Hagerty, Brian P Hagerty, Brian P 1702 E. Winter Drive Phoenix, AZ 85020
Correspondence Address	Brian P, Hagerty, 1702 E WINTER DR PHOENIX, AZ 85020-4420
Submission	Answer
Filer's Name	Renee L. Mitchell
Filer's e-mail	rmitchell@rcalaw.com
Signature	/rlm/
Date	09/07/2004
Attachments	answer.tif ( 4 pages )

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Outdoor Life Network, L.L.C., a Delaware corporation,

Opposer,

Brian P. Hagerty,

Applicant.

Opposition No.: 91,161,533

## ANSWER TO NOTICE OF OPPOSITION

Brian P. Hagerty ("Applicant") files this Answer to the Notice of Opposition, filed by Outdoor Life Network, L.L.C. ("Opposer") and hereby alleges as follows:

- In response to the second sentence of the first unnumbered 1. paragraph of Opposer's Notice of Opposition, Applicant admits that its mark, Extreme Gravity, Application Serial No. 78/181,588, was published in the Official Gazette on April 13, 2004, and denies that Opposer will be damaged by the registration of Applicant's mark.
- Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Notice of Opposition.
- Applicant admits the allegations contained in paragraphs 2 and 3 of 3. the Notice of Opposition and states that the U.S. Patent and Trademark Office ("USPTO") records speak for themselves.
- Applicant lacks knowledge or information sufficient to form a 4. belief as to the truth of the allegations contained in paragraphs 4 and 5 of the Notice of Opposition and states that the USPTO records speak for themselves.

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1	5. Applicant denies the allegations contained in paragraphs 6 and 7 of
2	the Notice of Opposition.
3	6. Applicant lacks knowledge or information sufficient to form a
4	belief as to the truth of the allegations contained in paragraph 8 of the Notice of
5	Opposition and states that the USPTO records speak for themselves.
6	7. Applicant denies the allegations contained in paragraph 9 of the
7	Notice of Opposition and states that the USPTO records speak for themselves.
8	8. Applicant denies the allegations contained in paragraphs 10 and 11
9	of the Notice of Opposition and states that the USPTO records speak for themselves.
10	9. Applicant denies each and every allegation not expressly admitted
11	herein.
12	<u>AFFIRMATIVE DEFENSES</u>
13	First Affirmative Defense
14	Opposer's claims are barred, in whole or in part, because Opposer
15	has failed to state a claim upon which relief can be granted.
16	Second Affirmative Defense
17	11. Opposer's claims are barred, in whole or in part, because there is
18	no likelihood of confusion between Opposer's alleged mark and Applicant's mark.
19	Third Affirmative Defense
20	12. Opposer's claims are barred, in whole or in part, by estoppel.
21	Fourth Affirmative Defense
22	13. Opposer's claims are barred, in whole or in part, because
23	Opposer's use of its alleged mark in connection with sports exhibitions and
24	competitions is irrelevant to this Notice of Opposition.
25	Fifth Affirmative Defense
26	14. Opposer's claims are barred, in whole or in part, because, upon
27	information and belief, Applicant used its mark in commerce in connection with

28 | eyeglasses, sunglasses and eyeglass lenses prior to Opposer's use of its alleged mark in

1	commerce in connection with sunglasses, eyeglass frames and eyeglass cases.
2	Sixth Affirmative Defense
3	15. Opposer's claims are barred, in whole or in part, by the doctrine of
4	waiver/acquiescence.
5	Seventh Affirmative Defense
6	16. Opposer's claims are barred, in whole or in part, by the doctrine of
7	laches.
8	Eighth Affirmative Defense
9	17. Opposer's claims are barred, in whole or in part, because the
10	registration of Applicant's mark will not tarnish or dilute Opposer's alleged mark.
11	Ninth Affirmative Defense
12	18. Opposer's claims are barred, in whole or in part, because Opposer
13	lacks standing to bring the subject opposition proceeding.
14	Tenth Affirmative Defense
15	19. Applicant reserves each and every other affirmative defense
16	identified in Rule 8(c) Fed.R.Civ.P., and each and every other matter that constitutes an
17	avoidance or affirmative defense that may prove through discovery to be supported by
18	the evidence in this proceeding.
19	WHEREFORE, Applicant prays that the subject opposition proceeding be
20	dismissed and that registration of its mark be granted.
21	Dated: September 7, 2004 Respectfully Submitted,
22	RYLEY CARLOCK & APPLEWHITE
23	
24	By: Renee L. Mitchell, Esq.
25	Melissa Schmucker, Esq. One North Central Avenue, St. 1200
26	Phoenix, Arizona 85004-4417 Voice: 602-258-7701
27	Fax: 602-258-7701  Fax: 602-257-9582  Attorneys for Applicant
20	Attorneys for Applicant

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1 2 3 4 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE 5 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD 6 7 Outdoor Life Network, L.L.C., a Delaware 8 corporation, 9 Opposer, 10 vs. Opposition No.: 91,161,533 11 Brian P. Hagerty, 12 Applicant. 13 14 CERTIFICATE OF SERVICE This certifies that a copy of the foregoing ANSWER TO NOTICE OF 15 OPPOSITION was served on Opposer by first class mail, postage pre-paid, addressed as 16 17 follows: David M. Silverman, Esq. COLE, RAYWID & BRAVERMAN, L.L.P. 18 19 1919 Pennsylvania Avenue, N.W. Suite 200 Washington, D.C. 20006 20 This 7 day of September, 2004. 21 nitcheel 22 23 24 25 26

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